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August 20, 2002

VIA ECFS

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware, WC Docket No. 02-157, Ex Parte Filing

Dear Ms. Dortch:

Freedom Ring Communications, LLC d/b/a BayRing Communications (“BayRing”) files this *Ex Parte* letter to address a point raised by Verizon in an August 16, 2002 *Ex Parte* letter.¹ In that letter Verizon asserts that BayRing attempts to “shoehorn claims regarding Verizon’s policies with respect to interconnection, reciprocal compensation, EELs, and dark fiber into the Commission’s public interest analysis.”² Verizon goes on to suggest that since some of the issues were resolved by the New Hampshire Public Utilities Commission (“NH PUC”) or by Verizon eventually taking a more “reasonable position” that these issues are no longer of any import to this proceeding.

Verizon’s position encapsulates in a nutshell why Verizon’s application should be rejected. First, Verizon’s position shows how disconnected its application is with the public interest in New Hampshire. Verizon suggests that issues of its anticompetitive practices are not relevant to the public interest analysis. As the Commission has noted, however, if there is a lack

¹ WC Docket No. 02-157, August 16, 2002 *Ex Parte* Letter from Richard T. Ellis, Director – Federal Affairs, Verizon to Marlene H. Dortch, Secretary, FCC (“August 16th *Ex Parte*”).

² *Id.* at 4.

of competitive entry in a particular state then the Commission will examine if this lack of entry is due to “the BOC’s failure to cooperate in opening its network to competitors, the existence of barriers to entry, the business decisions of potential entrants, or some other reason.”³ Also as BayRing noted in its Comments, Senators Burns, Hollings, Inouye, and Stevens in a letter to Chairman Powell noted that:

[t]he public interest requirements were added to Section 271 to ensure that long distance authority would not be granted to a Bell company unless the commission affirmatively finds it is in the public interest. Meaningful exercise of that authority is needed in light of the current precarious state of the competitive carriers which is largely due to their inability to obtain affordable, timely, and consistent access to the Bell networks.⁴

BayRing, in its Comments and Reply Comments,⁵ demonstrated that there is a lack of competitive entry in New Hampshire. Verizon’s anticompetitive practices go to the very heart of why competition is failing to take root in New Hampshire. The fact that Verizon feels these practices are irrelevant to the public interest shows the disdain it has for promoting the public interest in New Hampshire.

Verizon’s “all’s well that ends well” approach also speaks volumes about its application. First, all is not well, and all has not ended well for competitors in New Hampshire. Competitors such as BayRing had to devote substantial time and resources to get Verizon to abandon unreasonable and anticompetitive positions, or to get the NH PUC to resolve the issue. For instance, the reciprocal compensation billing issues were resolved, but only shortly before the hearings before the NH PUC.⁶ As BayRing noted in its Comments:

This resolution demonstrates a calculated gamble on the part of Verizon to test the resolve of CLECs like BayRing. Verizon waited until the last minute to see if the issue would imperil its application or if BayRing would accede, and then decided to act reasonably solely to further its Section 271 application.⁷

It is ironic that Verizon challenges the speculative revenues that BayRing purportedly fails to include in its profitability analysis, but does not consider the very real costs that CLECs must incur in addressing Verizon’s anticompetitive practices. Verizon’s tactics raise the costs of new entrants and impede their ability to compete. The fact that the problem is resolved, after much

³ *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶ 391 (1997) (“*Ameritech Michigan 271 Order*”).

⁴ See WC 02-157, Comments of Freedom Ring Communications, LLC d/b/a BayRing Communications at 53-54 (July 17, 2002) (“*BayRing Comments*”).

⁵ *BayRing Comments* at 62-65; WC 02-157, Reply Comments of Freedom Ring Communications, LLC d/b/a BayRing Communications at 2 (August 12, 2002) (“*BayRing Reply Comments*”).


⁶ *BayRing Comments* at 80, citing Dec. 7, 2001 Tr. at 128: 3-7.

⁷ *BayRing Comments* at 80.

expenditure of CLECs resources and much delay, is irrelevant. Verizon has impeded competition by imposing costs and impeding the ability of CLECs to offer service.

Finally, it should be noted that Verizon's ultimate abandonment of particular anticompetitive tactics in these specific instances does nothing to indicate that it will refrain from such tactics if it gets Section 271 authority. Its track record in New Hampshire, and particularly its lack of respect for the authority of the NH PUC,⁸ suggest that Verizon will be back to its old tricks if the Commission grants authority. The Commission must find that the "BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."⁹ Verizon's history of anticompetitive practices in New Hampshire are not only relevant to this consideration, but demonstrate in a nutshell why Verizon's application in New Hampshire should be rejected.

Respectfully submitted,

Handwritten signature of Eric J. Branfman, with the initials "by HB" written in parentheses to the right.

Eric J. Branfman

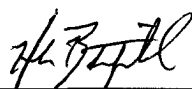
CC: Service List

⁸ Verizon characterizes BayRing's arguments regarding the NH PUC ruling as an "unfounded and unfair attack on the integrity of the New Hampshire PUC." WC Docket No. 02-157, Reply Comments of Verizon at 6, n. 1 (August 12, 2002). BayRing has nothing but respect for the efforts of the NH PUC to open the New Hampshire market to competition. Its March 1, 2002 findings would have gone a long way to opening the New Hampshire market and promoting the public interest. It is Verizon, in applying legislative and media pressure on the NH PUC, that demonstrates little respect for the integrity of the NH PUC.

⁹ *Ameritech Michigan 271 Order* at ¶ 386.

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on August 20, 2002, I caused to be served upon the following individuals the *Ex Parte* Filing of BayRing Communications, Inc. in WC Docket No. 02-157.



Harisha Bastiampillai

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